

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

MA VAISHNO, LLC,

Plaintiff,

V.

STATE FARM FIRE AND  
CASUALTY COMPANY,

Defendant.

No. 4:25CV789 HEA

## OPINION, MEMORANDUM AND ORDER

This matter is before the Court on Defendant's Motion to Dismiss Claim for Punitive Damages, [Doc. No. 6]. Plaintiff has not responded to the Motion. For the reasons set forth below, the Motion will granted.

Plaintiff filed this action in the Circuit Court of St. Louis County alleging claims of breach of contract and vexatious refusal to pay against Defendant. In its prayer for relief, Plaintiff seeks punitive damages.

Defendant removed the matter based on the Court’s diversity of citizenship jurisdiction. 28 U.S.C. § 1332(a)(1). Defendant moves to dismiss this claim for punitive damages.

There is no independent cause of action for punitive damages under either federal or Missouri law; punitive damages are a type of recovery available in some

instances but not others. *Jackson v. Wiersema Charter Serv., Inc.*, No.

4:08CV00027 JCH, 2009 WL 1310064, at \*3 (E.D. Mo. May 11, 2009). The general rule is punitive damages are not recoverable for breach of contract. *Stamps v. Sw. Bell Tel.*, 667 S.W.2d 12, 13–14 (Mo. Ct. App. 1984) (citing *Williams v. Kansas City Public Service Company*, 294 S.W.2d 36, 40 (Mo.1956)). An exception to the general rule allows punitive damages to be recovered when plaintiff alleges and proves an independent and willful tort founded on the breach of contract. *Id.* Punitive damages shall not be awarded unless the claimant proves by clear and convincing evidence that the defendant intentionally harmed the plaintiff without just cause or acted with a deliberate and flagrant disregard for the safety of others. Mo. Rev. Stat. § 510.261.1 *Otey v. Nationstar Mortg. LLC*, No. 2:24-CV-04041-MDH, 2025 WL 1710050, at \*3 (W.D. Mo. June 18, 2025).

Plaintiff's Petition contains no allegations of intentional and willful torts. As such, the claim for punitive damages should be dismissed.


Moreover, the Court considers Plaintiff's failure to respond to the motion as a concession of the motion to dismiss. Local Rule 4.01(B) provides:

(B) Except as otherwise provided in these rules or by order of the Court, each party opposing a motion (other than a motion seeking an extension of time) must file, within fourteen (14) days after service of the motion, a single memorandum containing any relevant argument and citations to authorities on which the party relies. If any memorandum in opposition requires consideration of facts not appearing in the record, the party must file with its memorandum all documentary evidence relied upon.

Accordingly,

**IT IS HEREBY ORDERED** that Defendant's Motion to Dismiss Claim for Punitive Damages, [Doc. No. 6], is granted.

Dated this 15<sup>th</sup> day of July, 2025.

  
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HENRY EDWARD AUTREY  
UNITED STATES DISTRICT JUDGE

